

Commission to Study the Comprehensive Shoreland Protection Act

Minutes of October 16, 2006 Meeting
Room 305, Legislative Office Building, Concord, NH
9:00 a.m. – 12:00 p.m.

Members Present

Members Present

Interest Represented

House of Representatives
NH DES
Office of Energy and Planning
Regional Planning Commissions
NH Lakes Association
At large waterfront owner
NH Farm Bureau Federation
NH Home Builders and Remodelers
UNH (estuary experience required)
NH Association of Realtors
NH Rivers Council
NH Timberland Owners
Landscaping Consultant
NH Conservation Commissions
NH Marine Trades Association
NH Attorney General
NH Natural Resource Scientists

Representative

David Currier
Rene Pelletier (designee)
Jennifer Czysz (designee)
Robert Snelling
William Smith PhD
Eric Herr
John McPhail
Joe Landers
Jeff Schloss
Tom Howard
Kathryn Nelson
Tom Hahn
George Pellettieri
Diane Hanley
Paul Goodwin
Jennifer Patterson (designee)
Cindy Balcius

Members absent

Senate
Senate
House of Representatives
At large waterfront owner
NH Municipal Association
NH Wildlife Federation
NH Waterworks Association

Carl Johnson
John Gallus
Michael Whalley
Michele Grennon
Carol Granfield
James Kennedy
Stephen Del Deo

Others in Attendance

Representing

Staff
PRLAC
PRLAC
DES Shoreland
NH Fish & Game
DES Limnology Center
House Committee Research
NHLA
CLF

Name

D. Forst
Max Stamp
Fred Gunter
Arlene Allen
John Magee
Jody Connor
Joel Anderson
Derek Durbin
Brad Kuster

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9: 00 am Meeting opened by Chairman Currier.

Rep. Currier explained that the commission would be using a new recording advice and reminded everyone to speak clearly, in turn, and to state their name before speaking.

Rep. Currier explained that the commission would start by continuing the discussion of streams orders that would be under the jurisdiction of the CSPA. At the previous meeting the Commission had voted to extend the jurisdiction of the CSPA to cover 3rd order streams as determined using the NH Hydrological Dataset. The Commission had discussed extending some protection to lower order streams as well and those issues needed further discussion.

Ms. Nelson re-opened the rivers discussion by calling the Commission's attention to the NH Rivers Council's white paper which advocated a 25 ft no cut zone on 1st and 2nd order streams and a 75 ft no cut zone along 3rd order and larger streams. These buffers would benefit water quality and as stated by a representative of NH Fish & Game at the September meeting vegetation along small streams was important to maintaining water temperature and fish habitat. She stated that the Commission needed to discuss the no cut buffer for 1st and 2nd order streams. The members of the Commission from scientific and environmental background had offered scientific reasoning to support buffers on these streams and she Read aloud the Rivers Council's rationale for their recommendations as submitted

Rep. Currier stated that while he understood the science in support of buffers he questioned whether "political science" would allow them to be extended further.

Mr. Snelling questioned whether this level of protection should be enforced at the state level as it was politically impractical but suggested that the Commission might recommend language encouraging the towns to adopt buffers on smaller streams. He thought extending state level protection to 3rd order streams was enough.

Mr. Herr asked what impact extending the protection of the CSPA would have on the number of river miles regulated and what administrative impact it would have on DES.

Rep. Currier reminded the Commission of the maps post during the September meeting showing changes in jurisdiction as lower streams orders were added. He stated that on the 1st order map the state nearly took on the color used to signify the first order streams due to their abundance.

Ms. Forst asked Mr. Couture of the NH DES Rivers Program if he knew what the numbers relative to river miles would be if various stream orders were added.

Mr. Couture state that the total river miles covered if the CSPA was extended all the way to 1st order streams would be approximately 12,328 miles. Adding an additional 4,000 miles of 1st order streams, and a couple thousand more in 2nd order streams,

Mr. Herr noted that this would essentially double the miles to be covered by the program.

Ms. Nelson noted the chart on river miles showed the percent change in total river miles that would be included as each successive order was added. Currently only 7% of the miles were covered but noted that the chart did not show a percentage for 3rd order.

Mr. Couture stated that he believed the 3rd order rivers would add approximately 2,200 miles into coverage.

Rep. Currier asked Mr. Couture to clarify what each column on the chart was showing.

Mr. Couture explained that the chart did not should 3rd order numbers because it was prepared at the request of the Rivers Management Advisory Committee and they were not seeking those numbers.

Ms. Nelson stated that hers notes indicated the number of 3rd order miles was 2,190. She felt the Commission needed to decide what areas needed protection. While it might seem nice to encourage the towns to take control and protect the smaller streams this is a direction that the state had been taking for some years with no success. She wondered if Mr. Pelletier could provide some detail as to which towns were actually exercising local control and if others were trying to begin local programs. She thought it would be reasonable for the commission to require a 25 ft buffer.

Mr. Goodwin wanted clarification that the protection for small streams being suggested by Ms. Nelson was different than the Woodland Buffer all ready discussed for 3rd order and higher streams.

Ms. Nelson stated that the Rivers Council's position was that a 25 ft no cut buffer should be required on the small stream.

Rep. Currier asked if there was further discussion.

Ms. Nelson wanted to further clarify that based on Mr. Goodwin's question that there were 2 options; one being a 25 ft buffer along 1st and 2nd order streams within which there could be either no cutting or a managed cut using the points system previously suggested.

Mr. Goodwin stated that the woodland buffer group spent a lot of time working on there proposal and that the committee should probably work towards accepting that proposal before looking at other alternatives. He further stated that one of the things the commission was trying to accomplish was to simplify the act and having multiple buffers for different waterbodies seemed to go against that idea.

Ms. Nelson stated that it didn't seem reasonable to treat the smaller streams the same as the larger streams in terms of buffer size.

Ms. Balcius stated that she had thought the commissions intend to address these issues at a later date through a watershed protection effort rather than now through the CSPA.

Ms. Nelson responded that the commission seemed to be of a mind to not extend protection any further beyond 3rd order streams at this time.

Rep. Currier stated that regardless of the decision, all of the white papers would be included in the report and therefore the legislators would have access to the recommendations and could act on them if they saw fit.

Ms. Nelson made motion to establish a 25 ft no cut buffer along all 1st and 2nd order streams.

Rep. Currier asked what would happen if the motion did not pass. He also asked if there was a second on the motion.

Mr. Pellettieri seconded.

Rep. Currier asked if there was any discussion.

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Ms. Balcius asked if the motion could be amended to reflect that these buffers should be included in future discussions regarding watershed protection.

Rep Currier asked if she wanted the Commission to reconvene in the future for watershed protection discussions.

Ms. Balcius stated that was not her intent but that the commission should perhaps recommend that that for the future.

Mr. Snelling asked if they could vote on the motion on the floor. If it doesn't pass then perhaps there should be a motion on watershed protection.

Mr. Pelletier suggested that since everyone seem to agree that a 25 ft no cut zone was a reasonable concept and that having different buffers for different stream orders would lead to confusion then perhaps the Commission should consider a standard middle of the road not cut setback distance with a managed cut using the point system behind the no cut area. For instance, a 35 not cut zone for all streams with the woodland buffer group's recommended point system behind it. Establishing separate setback standards would be too confusing and hard to enforce. If protection of water quality is important on a 4th order stream then it stands to reason that it is just as important on a 1st order stream. The general public has become much more aware of the importance of water quality and would not think this unreasonable. Moreover the 25 ft area is not where the problems are occurring. The majority of problems occur between 50 and 150 ft back.

Rep. Currier stated that the enforcement requirements would be enormous and that part of the problem would be that when laws pass everyone expects that they will be uniformly enforced throughout the state but that this was simply impossible since some areas were just more active than others. He also pointed to the fact that there was no mention of the CSPA on the Intent to Cut as evidence of how hard it was to address every aspect and wondered if the Commission had gone as far as it was reasonable to go.

Mr. Pelletier stated that, regardless of enforceability, if they were going to take a scientific approach then they should recommend the same buffer on 1st and 2nd order streams that they would recommend on 3rd and 4th. The science shows the same water quality issues regardless of order. Regardless of the flaws in enforcement having the law on the books will result in improved protection because organizations like Conservation Commissions and concerned individuals will step up to educate people and most people will try to do the right thing.

Ms. Balcius stated that while she agreed that the water quality issues were the same, this was the shoreland protection act and the smaller streams did not seem to have shoreland. That is why she advocated addressing them through some form of watershed protection plan. Putting the 25 ft no cut buffer on all streams could kill what they had worked on thus far by over-extending the CSPA unreasonably.

Mr. Pellettieri stated that at the last meeting they had gone this route and he had pointed out that they were not supposed to be recommending what was politically expedient but what was needed. They need to make their recommendations based on science in effort to simplify the act and make it easier for the public to understand. Enforcement needs to be improved whether through a permit process or other means as does education. These things need to make up the core of the Commission's recommendations not what is politically easy to accomplish.

Mr. Herr agreed with these points and stated that the Commission's recommendations were to be the basis for legislative discussion and if they wanted the legislature to have the right discussion about the real issues then the Commission should not pull back anything from their recommendations.

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Mr. Currier asked if 50 ft was the proper buffer for 3rd and 4th order streams then why not for 1st and 2nd.

Ms. Forst stated that while the commission had voted to recommend a uniform 50 ft primary building setback it had not as yet voted to recommend any buffer of any sort and the perhaps Mr. Goodwin's point on addressing the proposal of the woodland buffer group first before moving on to alternative buffers for other stream orders was a valid one.

Ms. Balcius agreed that they should define the buffer criteria first and then decide which streams it would cover.

Mr. Howard stated that he had thought there would be a managed cut and now they were discussing a no cut buffer and he didn't know how or when this change happened.

Rep. Currier stated that he thought the Woodland Buffer proposal had been accepted.

Ms Forst stated that the Commission had voted on the primary building setback but that no formal motion had been made regarding the woodland buffer.

Mr. Snelling stated that the addition of further streams was interesting but that it did not address the issues that were causing the current CSPA to fail and that it was chewing up valuable time. He pointed out that there were a number of issues left to vote on and asked that they move on to existing issues such as woodland buffer.

Ms. Nelson thought that perhaps they should table the motion regarding the establishment of a 25 ft no cut buffer on 1st and 2nd order streams.

Ms. Balcius agreed and made the motion accordingly.

Mr. Snelling seconded.

The vote was unanimous.

Ms. Nelson made motion that the Commission recommend the River Council's request for a 75 ft buffer which was either a no cut zone or a managed cut using the point system along all 3rd order and higher streams.

Rep. Currier asked if they wanted to entertain such a motion now or if they she discuss the buffer proposal.

Ms. Patterson asked is Ms. Nelson's motion could be expanded to include lakes and ponds.

Ms. Nelson agreed to amend her motion to consider a no cut buffer for all protected waterbodies.

Rep. Currier asked if that was the next discussion.

Mr. Smith said he believed that it was.

Rep. Currier asked if the motion was premature.

Ms. Nelson stated that she thought it could start the Discussion.

Mr. Smith agreed.

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Mr. Snelling stated that they had formed a sub-committee to address this issue which had met a half dozen times. That committee was made up of both conservation and development types and they had considered a no cut option versus a managed cut option but did not put forward a no cut concept because it seemed like a taking and might run into serious opposition in the legislature. They felt the a managed cut would have a much greater chance of passage and the system they arrived at would maintain approximately 50% of a virgin growth area which is what the original Act had attempted and it would be easier to understand and enforce. He wanted the commission to understand that the no cut option had been considered but the subcommittee believed the system they came up with was fair, within the original intent of the CSPA, and more likely to be accepted.

Ms. Patterson stated that it seemed like the next step for the Commission was to determine whether it wanted to pursue a no cut option or a managed cut option. She asked if the members of the woodland buffer group could be identified and then give an explanation of their proposal.

Ms. Balcius stated that previously the Commission had discussed adopting a combination of the 2 options.

Rep. Currier asked if anyone had a copy of the proposal that could be referenced.

Mr. Smith stated that it was most recently revised on September 12, 2006 and distributed on September 19th.

Ms. Patterson stated that she still thought it would be helpful if the committee members could explain the proposal again.

Rep. Currier asked for a committee member to volunteer.

Mr. Smith stated that he liked the idea of having the proposal explained. He stated that as the representative of the NHLA he was compelled to advocate a no cut buffer. His proposal would be a 50 ft no cut buffer which would correspond with the primary building setback. The no cut would mean that there could still be hazard tree removal, allowances for access paths, pruning but no harvesting of woody plant materials. The reasons were that it would maximize the protection of the surface water with regard to water chemistry, temp, quality and also habitat to the extent there was science to show that shading had habitat value. Secondly, it maximizes the ease of enforcement regardless of who the enforcing agency would be. Lastly the 50 ft buffer represents what sound science has found to be effective. The no cut buffer has the support of the NHLA, the Lakes Management Advisory Committee, the Rivers Council, and the Rivers Management Advisory Committee.

Mr. Snelling identified Tom Howard, Jim Kennedy, Tom Hahn, Paul Goodwin, William Smith, Diane Hanley and himself as members of the woodland buffer sub-committee.

Ms. Patterson asked who Ms. Hanley represented.

Rep. Currier stated that she was representing the Conservation Commissions.

Mr. Snelling read the September 12, 2006 version of the Woodland Buffer Proposal aloud. He pointed out that the ground cover definition that was not included in the current act and that the ground cover was an important part of the buffer. The Woodland Buffer Proposal prohibits the removal of ground cover within the 50 ft waterfront buffer. Tree cutting would be managed by a point system to eliminate the need for a surveyor. The method was field tested by Mr. Kennedy and found to protect 50 % of the normal, natural tree density. Water dependent structures with permits were allowed temporary impacts must be revegetated, accessory structures were allowed but were afforded no construction envelop. Minimum vegetation must be maintained. Beyond 50 ft, 50% of the undeveloped area must remain undisturbed.

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This idea was developed due to difficulties in defining permeability and impermeability. If things were to remain undisturbed then the definition of permeable was unnecessary.

Ms. Patterson asked if there were building envelopes allowed.

Mr. Snelling stated that the 15 ft building envelope off the front of the house must be replanted.

Ms. Patterson asked if there was any limit to the size of the structure that could be built.

Mr. Snelling stated there was not.

Rep. Currier stated that one of the advantages of the proposal was the elimination of the 20 year term.

Mr. Goodwin recognized the level of effort put into the proposal by Mr. Kennedy stating that he probably had over one hundred hours invested in it. He stated that the proposal had been a compromise and that the elimination of the construction envelope for accessory structures was a significant change, as was the elimination of the envelope for the home and the need to replant construction access areas. The fact that some areas must remain undisturbed is also an improvement.

Ms. Forst stated that her understanding was that there was no limit to the size of the structures or level of development and that of whatever was left, post-construction, 50% must remain undisturbed.

Mr. Goodwin stated this was accurate.

Mr. Snelling stated that when they were discussing limiting impervious surface area which would affect the size house that could be built on a lot the committee decided that the typical lot would create problems and issues that they did not wish to create and also there were issues of nonconforming lots. They felt they needed to limit themselves to what they did.

Mr. Landers stated he believed that many towns had local ordinances and that these sometimes included percent impervious limitations and that coverage issues may be taken care of at the local level.

Rep. Currier asked if he understood properly that the proposal would create options for landowners who might want to build a little smaller or a little larger.

Ms. Nelson stated this was not the case. You could just build as big as you want.

Rep. Currier agreed that you could build as big as you want but only within the 50%.

Mr. Nelson stated this was incorrect.

Mr. Snelling stated that within the first 50% ft you have to maintain the 50 point total but that some flexibility on which trees were kept could be allowed.

Ms. Nelson asked if the Commission could focus on the waterfront buffer. She stated that the point system was an improvement and made sense. However a no cut zone was the easiest to enforce and educate on. They had to choose between flexibility and simplicity.

Mr. Pelletier stated that most lots today are non-conforming. Approximately 95% of projects are non-conforming. Mr. Pelletier objected to the concept of allowing wire to wire construction. While he recognized the improvements in the waterfront zone and the benefit they would have, the continued ability to completely build out beyond 50 ft was unacceptable. It allows too much removal of vegetation within the shorelands. Some towns have place limits on development and they have been effective while

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allowing homes to be built, however most towns have not done this. He liked the point system but would like to see some incentive to convince people not to build out completely.

Ms. Patterson asked if he could think of any incentive ideas.

Mr. Pelletier stated that he would need a few minutes.

Ms. Patterson stated that the proposal does address many issues the Commission had raised but that it did not address structure size. Beyond 50 ft there was essentially no protection of the lot offered by the proposal.

Mr. Herr stated that a simple approach would be a point count to be maintained for the whole lot. Then the owner could make a trade off between house size and cutting.

Mr. Snelling stated that the shoreland buffer issue and house issue were separate. The first 50 ft would be protected. Beyond that, after development 50% would remain undisturbed. He suggested that they deal with the first 50 ft separately and then deal with the remainder separately. He also pointed out that even in the no cut proposal some cutting was allowed. The no cut proposal would require defining all of the exceptions.

Rep. Currier asked if he meant just the waterfront buffer.

Mr. Snelling stated yes.

Rep. Currier stated that he thought local zoning might cover some of the area beyond the primary building line.

Mr. Snelling agreed the local setbacks cover some but that on large lots you might still meet the setback and be able to build a 200 foot wide house. He stated that he thought Mr. Pelletier's issue was that he felt the size of the house should be commensurate with the size of the lot.

Rep. Currier asked if the 50% area specified in 3A of the proposal meant that only 50% of the total area could be developed.

Mr. Snelling stated no.

Rep. Currier asked if it meant 50% of what was left.

Mr. Snelling said yes.

Rep. Currier suggested it could be 50% of 10 ft

Mr. Snelling stated that it could be very little on a small lot.

Mr. Howard stated his support for the buffer proposal as submitted. He felt that a no cut zone was like a taking and even if it was not, it did affect the market value of the lot.

Mr. Schloss stated that in his experience, when he has been asked to consult on developed sites where the owners want to improve the drainage situation, he has found that there is no place left to work with. The house has taken up too much space. Agreed with the idea of incentives. Perhaps there could be a limit on the level of development but if you wanted to exceed that then you would need to offer certain things or meet stricter standards. The pattern he was seeing was that the houses were getting bigger not smaller

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and it was a minority of towns that had development limits. He was curious as to how many towns did have limits.

Mr. Landers stated that he could not state how many towns had limits but on larger waterbodies many towns did have both setbacks and maximum lot coverage limits. One of the things driving home size was economics. The home needed to be larger to equate to the size of the land beneath it. If you pay a million dollars for a piece of land then it is not practical to build a house that only covers 4% of the lot. He would be happy to help look at what the towns are currently using for size limits.

Ms. Balcius stated that she had done a great deal of consulting in the lakes region and while many towns had percent development limits they were generally tied to aquifers and those did not correspond to the shorelands. It was more tied to soil type. She stated that perhaps if a limit on impervious surface was set that an incentive, such as implementation of a drainage plan could be established to obtain an exception. She felt something should be done to limit the lot coverage.

Ms. Nelson stated that she thought Moultonborough had the longest shoreline on Winnepesaukee.

Ms. Balcius corrected her, stating that Alton in fact had the longest shoreline.

Ms. Nelson stated that Moultonborough had no limits. She didn't see the need to figure out which towns already had limits but to establish minimum criteria for all towns. Also in a no cut there would be limbing allowed to provide views. The River Council supports a 10% limit on impervious surface area. Under the current act 250 ft is the area to be protected not just 150 ft. their position was 10% of the area if the development was 50 ft back with as much as 25% developed if the setback was increased. Currently there are numerous innovative solutions for using pervious surface driveways.

Ms. Patterson agreed that Mr. Snelling's comment that the no cut buffer was not as simple as it sounds had merit and she expressed that she had initially had concerns that the buffer group was underestimating the complexity of their proposal because of their familiarity with it. Her concerns had been somewhat diminished and she agreed that their proposal seemed to continue the original intent of the CSPA. She further stated that the no cut buffer would have its difficulties due to need exceptions and the inability to reach a consensus of support for the concept. She felt that consensus support for a system that limited the scope of development was important. She stated that she would rather not see a system that combined methods such as percent impervious and a point system. She preferred one system covering the whole lot for simplicity. She thought Mr. Herr's suggestion was good as it was simple yet allowed flexibility. Her suggestion would be that uniformly through the lot you would need 25 point per square with a sum total for the lot. She ended by clarifying that it would not be a taking to require a no cut zone. As long as they were allowing some level of development there was no issue of it being a taking.

Rep. Currier asked about the waterfront buffer relative to the motion on the table. He point out that a first order stream was typically just a small brook. He wasn't sure if that should qualify as "waterfront".

Ms. Nelson stated that the issue had "come and gone"

Rep. Currier noted that it was her motion on the table.

Mr. Snelling stated that for now it would only apply to 3rd order streams.

Rep. Currier wondered if it was appropriate to call land along a 1st order stream "waterfront". He stated that he would be interested in a uniform system to apply to all streams without causing too much trouble. Mr. Snelling stated that the term "waterfront" could be changed to something broader. He stated they had considered using the term "riparian" instead.

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Mr. Snelling asked Mr. Goodwin to expand upon the committee's observation that on a nonconforming lot the house, driveway and septic could be up to 60 or 70 % permeable before you even start. When you consider that against the scientific recommendation for a 10 % limit and you cannot begin to get close. He stated that for this reason the percent development limit was not a useful concept. Instead they had decided that it would be better if they allowed that town to set local limits and protect 50% of what was left. By requiring that 50% remain untouched they avoided the need to define anything further or create additional standards. They felt that requiring the size of the house be proportioned to the size of the lot was ridiculous. It was simply not manageable.

Mr. Goodwin added that they had looked at several of these things and drawn up examples and they found that 10% was hardly enough for a driveway. He speculated that people would be constructing homes without septic systems to cut impervious areas down. Also he noted that there was no benefit to enforcement in going no cut. If people wanted to cut down trees they would still cut down trees. He didn't think it was fair and he didn't think it would be easier to enforce. He also thought that it didn't matter how big a house is in relation to a lot. It matters how big the house is in relation to how small the house is. He stated that he could think of a couple of lots where there was a 30,000 sq ft home but it was hardly visible from the water and the owner had left the 50 buffer essentially undisturbed. The lot has 3,000 feet of frontage. He didn't think it was fair that this guy should have to have a smaller home. The best incentive would be tax relief. He had a 1,200 sq ft house in Laconia and his house went from \$4,700 to \$12,700 and he sold it in 2001. The house is 1,200 sq ft and it is not worth the thousands of dollars in taxes. The value of that property lies in building a bigger house. It is the economic reality of NH's tax system. He felt that 80% of the issues were redevelopment issues and not new construction, although it could be different in the north where there has been less development.

Rep. Currier pointed out that redevelopment would still have to meet the requirements of the law.

Mr. Goodwin agreed.

Ms. Forst compared the existing requirements to the proposed. Currently the removal of shrubs and ground cover is prohibited, although the removal of 50% of the basal area of trees and 50% of the number of saplings may be removed. The "50 point system" is will accomplish the same but it will be easier to measure. The new language will define ground cover to include the "duff" layer which will be an improvement. The removal of the 20 year time frame for the maintenance of the buffer will also be an improvement. Once you move behind the first 50 feet the protection is the same as the current system in that there is no limit on what can be built. The only requirement is that 50% of what is left after construction will remain undisturbed, however it is very possible that it could be 50% of nothing. Ms. Forst asked if some could explain how high tax bills would force someone to build a bigger home. It would seem that building bigger would cause the town to reassess the property at a higher value and simply raise the taxes more. Building larger seemed more like a "want" than a "need".

Mr. Goodwin explained that the value of the property is in the land. You could build a million dollar home and that value of the property will not go up a million dollars because it is the land that has the value. Because the lot contributes such a higher percentage to the overall value of the property it does make sense to leave a small home on it. This is in part driving the trend on the consolidation of lots. By combining 2 lots into one you can cut taxes by half. There is a huge benefit to having a nice house since the tax base is in the land.

Ms. Forst stated that if she understood Mr. Goodwin correctly what he was saying is that the political situation was encouraging the very thing the CSPA was trying to prevent which was build larger and eliminate more of the buffer which is protecting water quality and rather than address it we were putting forth a system which acknowledge the political situation, accepted it and allowed it to continue.

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Mr. Goodwin stated that was not his intent. He stated that what they were trying to do was present a clear and concise method that someone could understand. He stated that he didn't care how big someone's house was as long as it does affect water quality.

Ms. Patterson noted that there was an impact to water quality. That is what the scientific evidence presented to the Commission has shown.

Mr. Goodwin argued that the science did not show that large houses had a negative impact on water quality. He stated that at a previous meeting Mr. Pellettieri had stated that he could design a large home that had no impact on water quality. He stated that Ms. Balcius could probably do the same. He stated that it was possible to design a really large house and have no impact on water quality if you are not increasing run-off or degrading water quality. He asked what would be next; if the state would be requiring green houses or gray roofs to protect water quality. He stated that he didn't know why the Commission was going in this direction.

Mr. Schloss wanted to address the economic issue raised earlier. He stated that they were not considering the fact that waters belonged to the State of NH and that they contribute approximately 1.8 billion dollars to the economy as found in a study sponsored by the NH Lakes Association. The trouble is that we are not considering that the water belongs to everyone. If you do build and create a problem where you start to lose water clarity or promote algae growth you can see as much as a 25% reduction in property values along the shore. These numbers were confirmed by independent studies done by the Economics Department at UNH and by the University of Maine. The argument about property values is biased because it favors the one property being developed instead of looking at the effect on everyone on the waterbody. He stated that in other states they would levy a pollutant tax which would definitely get everyone's attention. This was done in the west where they would establish watershed zone and individuals were taxed based on the pollution their property contributed. He stated that this would favor people in the business of designing nutrient attenuation systems but the bottom line was that you could not design a system if the lot was completely built out and there was no place to put it. It is not true that you can build a huge building and still attenuate the run-off because you need space in which to attenuate it and sometimes there isn't any space left. He stated that he was confused about the impervious surface issue. It had been stated that subsurface systems were impervious but subsurface systems are designed to be permeable and their function depends on permeability so including the system in the impervious surface area did not make sense.

Ms. Balcius stated that she agreed with Mr. Schloss. People move to the lake for aesthetic reasons. If water quality goes down, if people don't feel they can swim in July and August, then the property values drop. Somewhere the State has to draw the line. She stated that she had worked with large home owners on the lake but often their lots were also larger. She felt that the ratio of house to lot was probably higher than 10 % but she believed they could find a reasonable percentage that would work and it was necessary because you could not design storm water treatment if everything was gone. She also stated that it was not appropriate to focus on the market too much because the market would equalize given time.

Mr. Snelling suggested that they form a subcommittee to look at impervious surface area limits and defining what was or was not impervious. He stated that it was a complex issue but did not think the issue could be settled by such a large group. That was part of the reason the woodland buffer group avoided the issue.

Mr. Pelletier stated that a 20 or 30 thousand sq ft home on a 5 acre or larger lot was not an issue it was the large homes being built on small lots that hurt. He stated that the managed cut makes sense because it allowed flexibility but the reality was that there exists a mentality that you fit the lot to the house instead of fitting the house to the lot. He compared it to the situation in which people continue to buy boats that are too large to fit alongside the standard dock size allowed by the state and then want an exception to fit their boat or further they want to dredge the waterbody so they can fit their boat in when what they should

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have done was by an appropriately sized boat. The mentality that one can alter the lot to fit what they want is inappropriate and does not make sense. The point system was good but they need to get over the definition of impervious and set a limit on the area of construction. Perhaps an incentive could be proposed in which the limits could be altered. The problem is with new owners building larger homes to replace smaller homes on small lots. They think they can make the lot fit the home they want and it doesn't work. There need to be a way to minimize the obliteration of lots and building from wire to wire. He asked if the Commission could vote on the 50 ft managed cut zone and see if that could be agreed upon and then address setting limits on impervious surface behind the 50 ft setback.

Rep. Currier asked Ms Patterson if in fact this was not a taking.

Ms. Patterson stated that the owner could still make reasonable use of the land and therefore it would not be a taking.

Mr. Herr stated that he thought the Commission should try to agree on the first 50 ft buffer in the Woodland Buffer Proposal.

Ms. Patterson asked if the proposal could be split in two.

Rep Currier asked if it was necessary.

Mr. Pellettieri thought that there was consensus on what would be allowed in the first 50 ft and therefore they should vote on that section. It was the area beyond 50 ft back where they were having a problem. He could state from experience that people were building from wire to wire and he had been asked to deal with drainage, access, and other issues in the space that is left and all that is left is the setbacks. If you wanted to deal with drainage and the other issues then you had to make the house smaller. He felt the Commission should move on what they new they could agree on for now.

Mr. Goodwin stated that it sounded like a motion.

Rep. Currier asked what you would do with the next 100 ft.

Mr. Pellettieri said they could settle that after.

Mr. Snelling stated that there was already a motion on the floor.

Ms. Nelson stated that her motion was for a 50 ft no cut on 3rd order and higher streams.

Mr. Herr pointed out that he did not believe that motion was seconded.

Rep. Currier confirmed that it was not seconded and there was no motion on the floor.

Mr. Snelling moved that the Commission accept the Waterfront Buffer portion of the Woodland Buffer Proposal.

Rep. Currier stated that this was the draft submitted by the woodland buffer committee on 9/19.

Seconded by Mr. Howard.

Rep. Currier asked if there was discussion.

There was none.

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Ms. Forst repeated the motion as “Move to accept the Waterfront portion of the Woodland Buffer Proposal as submitted on 9/19.”

Mr. Snelling noted that it was dated 9/12/06 but distributed on 9/19.

Rep. Currier asked for the vote to be by show of hands.

The motion passed 15 – 1 with 1 abstention.

Rep. Currier asked how to move forward with the rest of the proposal.

Ms. Forst noted that someone had stated earlier that any percent limit it would likely be changed during the legislative process. She asked if the Commission could simply recommend that a limit on impervious surface be set rather than actually proposing a specific percent limit in order to save time.

Mr. Snelling agreed in concept. He further stated that perhaps they could accept the concept within the proposal that 50 percent of the area outside the construction footprint would remain undisturbed and then just focus on limiting the construction footprint.

Mr. Herr stated that he thought a subcommittee to review the imperious surface issues was appropriate. He further stated that there should be some program of incentives to encourage innovate approaches to protecting water quality or maybe just to adhere to a higher protection standard.

Mr. Snelling agreed that an incentive program should be pursued for innovative development. This should include solutions to drainage, septic and impervious issues.

Rep. Currier asked if it made sense to ask the legislature to look at innovative solutions.

Ms. Balcius stated that she agreed that the Commission was running short on time to discuss an issued as important as impervious surface limits but that the Commission needed to stress to the legislature how important the issue really is to water quality. She stated that the size of development relative to lot size was driving the impacts to water quality.

Ms. Patterson stated that she like the idea of proposing the concept rather than hard numbers and she agreed with Ms. Balcius that the Commission really needed to emphasize the importance of the issue. She stated that her original proposal was that 25 % of the total lot would remain in a natural state not that no more than 25 % could be impacted.

Mr. Currier asked for clarification.

Ms. Patterson suggested setting a minimum point score for the whole lot or maybe a flat minimum percentage to remain undisturbed as a possible solution.

Rep. Currier asked if it would include setbacks.

Ms. Patterson said it would include the full area of the lot.

Mr. Snelling asked if she was making a recommendation.

Ms. Patterson stated that she had mentioned it as a hypothetical situation earlier and that another member had brought it up again but seemed to misunderstand her original proposal. She was only clarifying.

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Mr. Snelling asked if it made sense to ask the legislature to address that kind of issue. If the Commission couldn't do it would the legislature be able to handle it? He stated that it might be better to give them a solution and let them accept or reject it.

Rep. Currier stated that if they were asked to consider a concept then they would probably just kick the bill out and study it and then it would take another 3-4 years. He stated that if the Commission couldn't find a solution then the legislature certainly would not find one quickly. He stated that a specific recommendation would be better even if it was not something that was heavily researched, otherwise it would just end up in a study committee.

Ms. Nelson stated that it seemed they should either form a subcommittee to make a recommendation or propose something to be reviewed by DES to determine viability.

Rep. Currier stated that asking DES for assistance did not make sense since the legislature had given the task to the Commission, not DES, and DES was far too busy.

Mr. Pellettieri suggested they establish a subcommittee to present an option at the next meeting and then move on to discuss other issues that were on the table.

Rep. Currier asked if there was interest in forming a subcommittee.

Mr. Pellettieri stated that he thought Ms. Patterson's proposal might be a good starting point but that he and other members could also bring real life examples to the table for review.

Ms. Balcius volunteered to be on the subcommittee and suggest the Mr. Pellettieri and Mr. Schloss may be able to help as well.

Mr. Schloss stated that he would like to be on the committee. He stated that he was considering Ms. Patterson's proposal, and while he didn't have actual numbers, he was interested in what might happen on a large piece of property. He said it seemed like a simple solution if it was workable.

Mr. Smith stated that right now the Commission had nothing on the buffer beyond 50 ft. While he understood that there were concerns about the level of building allowed he did not want to give up on the buffer. He definitely did want the Commission to have no recommendation.

Rep. Currier agreed and stated that he felt they should approve the full Woodland Buffer Proposal and then let the study committee propose modifications to it.

Ms. Patterson stated her agreement.

Rep. Currier stated that he didn't know if perhaps they wanted to have a second vote to accept the remainder of the buffer proposal but he felt that it was crucial that they have something in place.

Mr. Snelling stated that he wasn't sure how well Ms. Patterson's suggestion would integrate with the 50% undisturbed requirement but he wanted to propose a motion to table this discussion until November when they could vote on the Woodland Buffer which would include the restrictions on undeveloped land and size of home in relationship to lot size and he hoped that the committee would have recommendations on a proposal they could vote on in November.

Rep. Currier asked if he wanted to make that a motion.

Mr. Snelling stated that he had made it a motion.

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Mr. Currier asked if it would be better to make the buffer proposal the working document which could then be amended.

Mr. Snelling stated that he would prefer that option but he wasn't hearing that and his concern was that if they applied an overall 25% impermeability requirement it would not correspond well to the 50 % undisturbed requirement. They would need to make some adjustment to accommodate that requirement.

Mr. Pelletier stated that he wanted to be on the subcommittee. He also pointed out that if you had a 30,000 sq ft lot and allowed 25% building envelop you could have a 7,500 sq ft house and he felt that it needed to be simple and empirical. People should know that if they buy a certain size lot, then they will be allowed a certain level of construction. The point system could be used outside of the building envelop. He asked Mr. Landers to consider be on the subcommittee as well.

Mr. Snelling amended his motion to accept the study committee's recommendation to require that 50% of the area remain undisturbed outside of the improved building area and that the study committee be formed to address house size relative to lot size to be voted on at the next meeting.

Seconded by Mr. Pelletier.

Mr. Schloss stated that Mr. Snelling had paraphrased and he felt they should adopt the proposal outright. He pointed out that Ms. Patterson's proposal was not to limit construction to 25 but to require 25 points which would allow 75% of the lot to be cleared and he cautioned against going that route too quickly and suggest they wait for the committee.

Ms. Patterson confirmed that Mr. Schloss was correct.

Ms. Czysz stated that she like Mr. Snelling's suggestion but in his paraphrase he changed the wording from "developed portions" to "building envelop" which she thought was better.

Mr. Snelling stated that he meant to keep the wording as written but that it could be amended.

Ms. Forst suggested that perhaps that was something the study committee could make but at least by accepting the proposal they Commission would have a starting off point.

Rep. Currier asked for further discussion. Hearing none, he stated that he had Messrs. Pelletier, Schloss, Landers, Howard, and Pellettieri, and Ms. Balcius on the study committee he asked if anyone else was interested.

Ms. Forst stated that she was not volunteering and didn't believe she could as she was not a voting member, but wanted to pointed out that the Office of Energy and Planning designee was now Jennifer Czysz not Jennifer DeLong, and that she thought it would be appropriate for OEP to be represented on the committee if possible.

Ms. Czysz stated that she would be the designee in the future and that she would be willing to be on the committee.

There was no further discussion so the vote was taken.

The motion passed 16-0 with one abstention.

Rep. Currier confirmed the committee member as Messrs. Pelletier, Schloss, Landers, Howard, and Pellettieri, Ms. Balcius, and Ms. Czysz.

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Rep. Currier directed the committee to meet quickly in order to develop a draft which could be sent to the full Commission prior to the November meeting so the members would be prepared to discuss it.

Mr. Pellettieri suggested that the subcommittee meet immediately after the meeting so that they could work out a schedule.

Rep. Currier stated that he expected a copy of the decision tree to go in the report. He asked if anyone objected to that idea. No objections were raised. He noted that the next agenda item was to look at permit processes and possible fees. He asked where the members thought it would be best to start.

Mr. Goodwin stated that the woodland buffer group had given some consideration to permitting and that they proposed a permit by notification for tree cutting and perhaps a fee could be required with that form.

Mr. Snelling stated that he thought there were 2 issues; how to manage the program and how to fund it. He stated that the decision tree showed that the only activity that doesn't already need a permit is cutting trees. For example if you buy an existing home with a treed frontage and you want to cut for a view, there is no permit required. If you buy land and want to build a new house then you will need a building permit, but if you are not building and you only want to do clearing there is no permit needed. They suggested a permit by notification from the town for tree cutting that would be similar to getting a burn permit. A copy of it might be sent to the state. Even though permits are already required for everything there is a lack of coordination between agencies. If there appeared to be a discrepancy in terms of Shoreland issues on a subsurface application there appear to be a failure of agencies to communicate that discrepancy to one another. They want to find a way to correct this. They were thinking that there should either be an over-riding permit or a coordinated review of permits by the Shoreland program. He thought that all activities in the Shoreland area should be required to be reviewed by the Shoreland Program staff. That would mean that a standard set of information would be required with all permits issued in the protected shoreland to ensure that the appropriate information was available.

Ms. Patterson referred the Commission members to an earlier proposal to revise RSA 483-B:6. This proposal was drafted with the decision tree. She noted that there were no permits required under the act and that it was designed to piggyback on existing permits. Within DES if someone applies for a Site Specific, Wetlands, or Subsurface permit within the protected Shoreland then the project is reviewed for compliance with the CSPA whereas if they went for a local building permit this review probably wasn't happening and there wasn't time to do a review for Shoreland purposes before construction started. Ms. Patterson stated that in the proposal, certain complex cases would require approval from the Shoreland Program prior to construction. For instance construction on an existing nonconforming lot of record would now need a permit from the DES. It also added a permit to be obtained in any town that does not have local zoning. The law would be revised to more clearly state that towns were required to consider the requirements of the CSPA in their permitting decisions.

Mr. Smith stated that the woodland buffer committee included the permit by notification in their proposal to provide a mechanism to describe what trees existed, figure out the point and explain what cutting would be done.

Ms. Patterson stated that the notification could be added into section B:6 easily but asked if the notice would go to the town or the state.

Mr. Smith stated their intent was that it would go to the town and the town would copy the state.

Mr. Schloss stated that it seemed like a good idea to add that to section B:6. He stated that it seemed to identify some of the previously noted issue related to the failure of towns to identify or communicate Shoreland problems during the permitting process and he hoped this would include guidance documents that would be required, such as a checklist, which must be filled out and would put the landowner on

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notice as to what the requirements were within the Shoreland. He noted that DES had attempted to draft a check list but that it did not do what they wanted.

Rep. Currier stated that he did not believe they ever intended to put the checklist in the statute.

Mr. Schloss agreed but said that under #3 it stated that the department shall disseminate forms and applications and this that this would make it easier for the towns to keep track of what was going on if it was on forms provided by DES. If the towns could keep track of this then perhaps a state level permit was unnecessary. He said that he did not think DES really wanted or could take on the burden of an additional permit. This would make sure that the towns would be able to follow the current law.

Ms. Forst stated that group that started to put together the final report had been discussing this issue earlier and agreed in larger part with what Mr. Schloss had just stated. They discussed the possibility of, rather than requiring another separate permit, requiring certain standardized information that would be submitted to whichever permitting agency was considering an application within the protected Shoreland. Standardized information is already required for state application and this would mean extending the requirement to permits from municipalities. It would allow the towns to tell applicants that because of their location the state required certain additional information on their application and the towns would not have to take the blame. They would then have the information necessary to make an informed decision relative to Shoreland requirements. The town building requirements would not be changed. The towns are already required by law to issue permits only as would be consistent with the act. What the state would do is say that this is the minimum information that is needed for them to make that decision. Issuing permits inappropriately is and still would be a violation. The state would also have the ability to seek background information on alleged violations from the town because it was required with the local permit. If the town did not require the information it would be a finable violation.

Mr. Schloss agreed with this concept as a direction in which to move forward and stated that this should help correct a lot of the problems with enforcement.

Mr. Snelling stated that he like Ms. Patterson's proposal because it seemed to hit the major problem areas and was a step back from requiring another permit for review by the state. He thought it was a giant step forward and in combination with education and outreach was a reasonable compromise to make.

Mr. Goodwin wanted to clarify that for things like the redevelopment waiver made him nervous because if someone had a huge lot that had nonconforming structures work they would now need a permit to do work on it even though they did not want to do anything to the nonconforming structures.

Ms. Patterson noted that this was not a new requirement but was simply a reference to the existing requirements of RSA 483-B:11 and that it would not affect owners in the way Mr. Goodwin had just described. The reference simply identifies the mechanism for obtaining a waiver.

Mr. Goodwin stated that the requirement in B:11 only pertained to when work was being conducted on the non-conforming structure.

Ms. Patterson pointed out that the language taken from section 11.

Mr. Goodwin stated that section 11 cover non-conforming structures and rebuilding or replacing those structures and other stuff but if you owned a house and happened to have a non-conforming gazebo now you would need a redevelopment waiver because the Commission was creating a new permit.

Ms. Patterson reiterated that there was no new permit and the language was only a reference to the existing language of RSA 483-B:11.

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Mr. Goodwin said he didn't reach the same conclusion but would defer to Ms. Patterson.

Ms. Patterson offered to rewrite the reference to make it clearer.

Mr. Goodwin claimed that he had been held to proving things on dock applications that had nothing to do with what they were doing. He cited a specific case where he had been asked to provide a tree inventory on an application where the home portion of the project was done and his portion of the project was just starting and now he was being asked for tree information even though it was unrelated to what he was doing.

Rep. Currier pointed out that the language specifically referenced section B:11.

Mr. Goodwin continued and stated that he did not think they could avoid the fee discussion.

Rep. Currier suggested several thousand per square inch.

Mr. Goodwin stated that would solve a lot of problems and then went back to the woodland buffer proposal as it pertained to the permit by notification for tree cutting. He stated that the group had felt that a fee of \$25 would be ok. The balance of their discussions pertained to fees and they thought that perhaps an additional fee could be assessed against wetlands, site specific and subsurface applications within the protected shoreland to go funding the Shoreland Program. He stated that while he was not a proponent of greater fees the program had to be paid for somehow. He did not know what the total amount of funds needed would be.

Ms. Forst stated that the topic of fees had been discussed within DES and that there was some contention about fees in that it is assume that once the fee is paid then an approval is imminent. Also there are already a large number of fees assessed on the shorefront owners and this would add to that burden. Since the public waters were what was being protected, the public as a whole received benefit from their protection, and the impacts to the water quality were actually a result of activities within the watershed and not just on the shoreline, then perhaps it would be appropriate to assess a fee against all permits for work and not just those in the protected Shoreland.

Mr. Herr asked what the fees would cost a shore front owner today.

Ms Forst stated that it would vary depending on what they wanted to do. The fee for subsurface would be \$150, the Wetlands fee is \$100 plus fees based on sq ft and type of impact, alteration of terrain would require a fee and the local building permit might require a fee. Ms. Forst reiterated that the Commission members have noted several times that the water quality is really a watershed development issue.

Rep. Currier stated that this just was the way that business was done in NH. There was no broad based tax, just fees for users.

Ms. Forst pointed out that the users were the general public and not just the shorefront owners.

Mr. Herr stated that he would make the distinction that it was the shorefront owner that wanted to do the work that required the permit therefore they should be the ones to pay for it. He did not suspect the fees would be significant enough to unreasonably burden the shorefront owners.

Mr. Schloss asked if the draft that Ms. Patterson provided needed to have fees incorporated.

Mr. Currier stated that some funding mechanism had to be identified.

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Mr. Schloss agreed that funding was necessary but that he wanted to know if it had to be incorporated into the language for RSA 483-B:6. He also stated that there would be a rationale for adding a fee to all watershed projects instead of just Shoreland. He thought that a \$25 fee on the permit by notification seemed reasonable. He further stated that if possible he would prefer to tackle the permit issues first and then talk about the notice to cut and then discuss outreach and funding.

Mr. Snelling pointed out a fee funding proposal that had been worked on. He stated that his first concern was what was permitted and then he was concerned about funding next. He stated that there should be a permit fee to defray costs but he didn't know if he could defray all costs. He stated that to do the program right he estimated it would take 1/2 million dollars a year and that it would likely not come from the legislature but probably could not come solely from permitting either. He thought that address what needed a permit and from whom first and then go back to fee issues.

Rep. Currier stated that the legislature had a rule that programs were to be funded at 125 percent of cost and that the Fiscal Committee would be looking at funding sources and crunching numbers. He did not think \$25 would be enough.

Mr. Pelletier agreed. He stated that \$25 would not make a dent. He stated that the department was working on everything it could catch now. The lowest fee he could think of was \$100. He stated that a single waiver could easily chew up weeks of staff time. He cited a specific project in Orford the he had spent hours on in addition to the staff's time and \$25 would not begin to cover the expense of the application. He stated that subsurface was charging \$150 and alteration of terrain was charging \$500. He noted that currently the review of Shoreland waivers and variances was free and the department could not afford it. He stated that Ms. Patterson had out lined all the existing permits correctly but the problem was that the existing processes were so time consuming to the staff that they would take far more than \$25 to pay for. DES cannot continue to review these applications for free.

Rep. Currier stated that DES would be receiving fees. Otherwise there would never be an outreach program.

Ms. Forst explained that the way the revised language of B:6 read there was only one new permit and that was the building permit in a town lacking zoning. All of the other permits already exist and have set fees but now the Shoreland staff need to review those projects as well but does not get the assessed fee. Those that need waivers or variances do not pay any fee. The only fee sources would be variances, waivers, non-conforming lot permits and permits in towns without zoning. The other choice is to add a charge to all other permits as well.

Mr. Goodwin clarified that that \$25 recommendation pertained to the permit by notification only.

Mr. Pelletier stated that the cheapest notification was currently \$100.

Mr. Goodwin stated that the notification would not require any review. It would only be a notice. The woodland group was considering a \$100 surcharge for other applications.

Rep. Currier stated that this was one thing that the legislature was very good at; identifying and assessing funding. If the Commission could outline the need and a source then the legislature could work it out.

Ms. Patterson stated that the language she had proposed was really not for fee purposes.

Mr. Pellettieri stated that the applicant's are already paying too much but it might be cheaper if the system could be straightened out.

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Ms. Balcus wanted to clarify that she hoped this would simplify the process and shorten the time the process took.

Mr. Pelletier stated that he thought that if the impervious surface limits were enacted it would because it would set and definitive limit and eliminate a lot of arguing.

Mr. Herr stated that permitting fees should cover the cost of issuing permits and it sounded like waivers should be assessed a higher fee. He thought the cost should be appropriate. If it was \$5,000, then they should pay \$5,000.

Mr. Pelletier asked if everyone could agree on \$5,000.

Rep. Currier said that would force him to increase the size of his home.

Ms. Nelson made a motion to accept the revised RSA 483-B:6 language with the addition of the permit by notification requirement.

Mr. Schloss seconded the motion.

Rep. Currier asked for discussion.

Mr. Smith asked Ms. Patterson where the permit by notification should go in the revised language.

Ms. Patterson suggested a separate roman numeral.

Rep. Currier asked if it was right to try to insert a portion of the woodland buffer into this document.

Mr. Smith stated that he simply wanted to know where it would be appropriate.

Ms. Forst if the language stating that the department would disseminate forms could be replaced with language stating that the department would establish standards for the information to be submitted with all applications.

Ms Nelson amended her motion accordingly.

Ms. Patterson asked if there should be a fee reference.

Rep. Currier agreed that the fees should be referenced but not specified.

Ms. Nelson amended the motion to include fees.

Mr. Snelling thought that fees should not be included since some fees would go to the town. The town will incur some cost and should receive some fees.

Rep. Currier stated that he did not believe that would be a problem since the towns would be able to assess their own fees for building permit. Then the owner would pay an additional fee with the state permit.

Mr. Snelling pointed out that a state permit may not be necessary.

Mr. Goodwin stated that at times only a local building permit would be required.

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Mr. Schloss noted that the building permit would be issued by the town but based on information standards established by the state.

Ms. Patterson stated that in her language the owners must receive all necessary approvals.

Mr. Snelling asked that there be an amendment stating there shall be a fee assessed with all permits for funding education and permitting.

Ms. Nelson amended the motion.

Mr. Currier stated that the final report committee would work on editing the document accordingly.

The motion passed 15-0 with one abstention.

Rep. Currier asked the impervious committee members to consider including an incentive program which considered various aspects of more nearly conforming.

Mr. Snelling stated that one of the concerns previously voiced by the Commission was the interplay of the Wetlands Act and the Shoreland Act is they related to water dependent structures. DES had only been considering the wetlands impacts and not Shoreland impacts during their application reviews. The Superior Court had ruled last year that this was not appropriate and that the wetlands jurisdiction extended over the entire 250ft Shoreland zone and that when reviewing projects within the Shoreland zone DES should apply the most stringent standard to the entire project area. He noted that the decision was being appealed. He stated that he would like to see language added to the CSPA that would support the Superior Court's interpretation of the CSPA. He suggested that the language would be "the permitting of projects involving water dependent structures under RSA 482-A must consider the entire area of the proposed project and the standards established under 482-A must be applied to the entire project."

Ms. Patterson stated that she was limited in what she could say on this issue since the project was in fact being appealed to the Supreme Court, but she wanted to point out that this was a rather complex issue to raise 15 minutes after the meeting was scheduled to end. She further advised that the Commission wait until they had more time to discuss the issue.

Mr. Snelling stated that while he recognized that the issue was complex, the concept seemed simple. He stated that the idea that the State would only assess a portion of the impacts not the whole project didn't make sense. He stated that the principal should be simple. The review of water dependent structure should consider all of the impacts. His goal was to at least make sure that the Commission's position be on the record in case the appeal overturned the Court's original decision.

Rep. Currier suggested the Mr. Snelling email a copy of his recommendation to the Commission members so they could review it and comment at the next meeting.

Mr. Snelling stated that he had hard copies with him but could email the language out as well.

Rep. Currier stated that either method was fine and that he simply wanted the Commission members to be able to review the language before the next meeting. He also stated his agreement with the idea of making a statement in support of the Court's decision.

Mr. Snelling stated that while the Court would rule on what the current CSPA says he felt that the Commission should clearly state what they thought the CSPA should mean or say.

Ms. Patterson stated that the problem was that she would be defending the position that the State had been taking which was that the Superior Court's decision was wrong.

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Mr. Snelling stated that he felt the State's position was wrong and that if the decision was upheld then they would be back where they started.

Ms. Hanley noted that she had to leave but would like to be included in the discussion. She asked that the issue be deferred to the next meeting.

Mr. Goodwin stated that he felt the issue was too complex and that it could take an entire meeting since it involved transferring public trust issues onto private property and he thought it was too much for the Commission to handle.

Rep. Currier stated that it would be on the Next meeting's agenda.

Mr. Smith asked when the next meeting would take place.

Rep. Currier stated it was scheduled for November 13th which was a Monday. The meeting would start at 9:00 am.

Meeting closed at **12:19**.

Next Meeting will be November 13, 2006 at 9:00 am.